

STATE OF COLORADO

John W. Hickenlooper, Governor
Larry Wolk, MD, MSPH
Executive Director and Chief Medical Officer

Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department
of Public Health
and Environment

May 29, 2014

James Tiffany, President
Leadville Corporation
96 Lakeshore Drive
Corpus Christi, TX 78413

Certified Mail Number: 7012 1010 0002 1774 4764

RE: Service of Notice of Violation/Cease and Desist Order, Number: IO-140529-1

Dear Mr. Tiffany:

Leadville Corporation is hereby served with the enclosed Notice of Violation / Cease and Desist Order (the "NOV/CDO"). The NOV/CDO is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") pursuant to the authority given to the Division by §§25-8-602 and 25-8-605, C.R.S., of the *Colorado Water Quality Control Act*, (the "Act"). The Division bases the NOV/CDO upon findings that Leadville Corporation has violated the Act and/or permit or control regulations promulgated pursuant to the Act and/or a permit, as described in the enclosed NOV/CDO.

Pursuant to §25-8-603, C.R.S., Leadville Corporation is required, within thirty (30) calendar days of receipt of this NOV/CDO, to submit to the Division an answer admitting or denying each paragraph of the Findings of Fact and responding to the Notice of Violation.

This action could result in the imposition of civil penalties. The Division is authorized pursuant to §25-8-608, C.R.S., to impose a penalty of \$10,000 per day for each day during which such violation occurs.

Please be advised that the Division is continuing its investigation into this matter and the Division may identify supplementary violations that warrant amendments to this NOV/CDO or the issuance of additional enforcement actions.

Should you or representatives of Leadville Corporation desire to discuss this matter informally with the Division, or if you have any questions regarding the NOV/CDO, please do not hesitate to contact Christy Pickens of this office by phone at (303) 692-3584 or by electronic mail at christy.pickens@state.co.us.

Sincerely,



Christy Pickens, Enforcement Specialist
Clean Water Compliance & Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Enforcement File

ec: Natasha Davis, EPA Region VIII
Jackie Littlepage, Lake County Public Health Agency
Nicole Rowan, Watershed Section, CDPHE
Michael Beck, Grants and Loans Unit, CDPHE
Bret Icenogle, Engineering Section, CDPHE
Kelly Jacques, Field Services Section, CDPHE
Erin Scott, Permits Section, CDPHE
Tania Watson, Compliance & Enforcement Unit, CDPHE



COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
DIVISION OF ADMINISTRATION
WATER QUALITY CONTROL DIVISION

NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: IO-140529-1

IN THE MATTER OF: LEADVILLE CORPORATION
CDPS PERMIT NO. CO-0027014
LAKE COUNTY, COLORADO

Pursuant to the authority vested in the Colorado Department of Public Health and Environment's (the "Department") Division of Administration by §§25-1-109 and 25-8-302, C.R.S., which authority is implemented through the Department's Water Quality Control Division (the "Division"), and pursuant to §§25-8-602 and 25-8-605, C.R.S., the Division hereby makes the following Findings of Fact and issues the following Notice of Violation / Cease and Desist Order:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times relevant to the alleged violations identified herein, Leadville Corporation was a Colorado corporation in good standing and registered to conduct business in the State of Colorado.
2. Leadville Corporation is a "person" as defined under the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).
3. Leadville Corporation owns and/or operates the Sherman Mine (a.k.a. Sherman Tunnel) which is an inactive lead and silver mine. The Sherman mine is located east of the town of Leadville, Colorado at 39.227778 North latitude and -106.183889 West longitude, in Lake County, Colorado, (the "Facility").
4. The Facility is the subject of the Colorado Discharge Permit System, Permit No. CO-0027014 (the "Permit"). The current Permit (fifth renewal) became effective on July 1, 2007 and expired on June 30, 2012. The permit was subsequently administratively continued, pending permit reissuance.
5. The Permit authorizes Leadville Corporation to discharge treated wastewater from the Facility through Outfall 001A from a settling pond into Iowa Gulch. The Permit includes an authorization for a discharge from Outfall MON1, which is a database distinction assigned to Outfall 001 for monitor and report only effluent parameters required to support a reasonable potential analysis.

6. On December 5, 2005, the Colorado Mined Land Reclamation Board ordered the revocation of Leadville's Corporation's Sherman Mine Section 112 reclamation permit and forfeited Leadville Corporation's financial warranty (bond). As a result, the Colorado Division of Reclamation, Mining and Safety ("CDRMS") was required to use the forfeited bond to reclaim the Sherman Mine site. The reclamation activities included regrading and re-establishing the site's original drainage and as part of this work, the settling pond was removed and leveled in 2008. Currently, no wastewater treatment occurs at the Facility and wastewater from the mine discharges directly from the Sherman Tunnel to Iowa Gulch.
7. Iowa Gulch is "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (102).
8. Pursuant to 5 CCR 1002-61, §61.8, Leadville Corporation must comply with all the terms and conditions of the Permit, and violations of such terms and conditions as specified in the Permit may be subject to civil and criminal liability pursuant to §§25-8-601 through 25-8-612, C.R.S.

Failure to Submit Discharge Monitoring Reports

9. Pursuant to Part I.B.1. of the Permit, in order to obtain an indication of the probable compliance or noncompliance with the effluent limitations specified in Part I.A.1. of the Permit, Leadville Corporation is required to monitor all effluent parameters at the specified frequencies and report the results on Discharge Monitoring Reports ("DMRs").
10. Pursuant to Part I.D.1. of the Permit, Leadville Corporation is required to report all monitoring results on a monthly basis (quarterly basis for Whole Effluent Toxicity ("WET") results) using Division approved DMRs. Leadville Corporation is required to ensure the DMRs are mailed to the Division so that they are received no later than the 28th day of the month following the monitoring period. The Permit specifies that if no discharge occurs during the monitoring period, "No Discharge" shall be reported on the DMR.
11. Division records establish that Leadville Corporation failed to submit DMRs to the Division for the reporting periods identified below:

LEADVILLE CORPORATION <u>DELINQUENT DISCHARGE MONITORING REPORTS</u> <u>Monitoring Periods 2008 - 2013</u>	
DISCHARGE MONITORING PERIOD	OUTFALL NUMBER(S)
All Months from January 2008 – December 2008	001A
All quarters from January 2008 – December 2008 Quarterly (WET) Monitoring	001X
All Months from January 2009 – December 2009	001A
All quarters from January 2009 – December 2009 Quarterly (WET) Monitoring	001X

LEADVILLE CORPORATION
DELINQUENT DISCHARGE MONITORING REPORTS
Monitoring Periods 2008 - 2013

DISCHARGE MONITORING PERIOD	OUTFALL NUMBER(S)
All Months from January 2010 – December 2010	001A
All quarters from January 2010 – December 2010 Quarterly (WET) Monitoring	001X
All Months from January 2011 – December 2011	001A
All quarter from January 2011 – December 2011 Quarterly (WET) Monitoring	001X
March 1-31, 2011	MON1
April 1-30, 2011	MON1
June 1-30, 2011	MON1
August 1-31, 2011	MON1
September 1-30, 2011	MON1
All Months from January 2012 – December 2012	001A
All months from January 2012 – December 2012, except April 2012	MON1
All quarters from January 2012 – December 2012 Quarterly (WET) Monitoring	001X
All Months from January 2013 – December 2013	001A
All months from January 2013 – December 2013, except October 2013	MON1
All quarters from January 2013 – December 2013 Quarterly (WET) Monitoring	001X

12. Leadville Corporation's failure to submit DMRs to the Division for each reporting period constitutes violations of Part I.D.1. of the Permit.

Failure to Properly Monitor and Report

13. Pursuant to Part I.B.1. of the Permit, Leadville Corporation is required to monitor all effluent parameters at specified frequencies to provide an indication of probable compliance or noncompliance with the effluent limitation of the Permit. The results of such monitoring shall be reported on the DMRs. Part I.B.1. of the Permit provides that Leadville Corporation may be eligible for winter month monitoring exemptions due to site inaccessibility if Leadville Corporation can adequately demonstrate that the site is inaccessible for the affected monitoring period(s).
14. On July 24, 2013, a representative of the Division (the "Inspector") conducted an on-site inspection of the Facility pursuant to the Division's authority under §25-8-306, C.R.S., to determine Leadville Corporation's compliance with the Water Quality Control Act and the Permit. During the inspection, the Inspector interviewed Facility representatives, reviewed the Facility's records, and performed a physical inspection of the Facility.
15. During the inspection on July 24, 2013, the Inspector noted that Leadville Corporation was not conducting effluent monitoring or WET monitoring as required by the Permit and that Leadville Corporation had not been submitting DMRs as required by the Permit.
16. Division records establish that the Leadville Corporation submitted the DMRs identified below indicating that samples of the effluent were not taken during the monitoring periods.

LEADVILLE CORPORATION	
DISCHARGE MONITORING REPORTING PERIOD	OUTFALL
8/1/2008 – 8/31/2008	MON1
9/1/2008 – 9/30/2008	MON1
12/1/2008 – 12/31/2008	MON1
1/1/2009 – 1/31/2009	MON1
2/1/2009 – 2/28/2009	MON1
3/1/2009 - 3/31/2009	MON1
8/1/2009 – 8/31/2009	MON1
12/1/2009 – 12/31/2009	MON1
1/1/2010 – 1/31/2010	MON1
2/1/2010 – 2/28/2010	MON1
3/1/2010 – 3/31/2010	MON1
4/1/2010 – 4/30/2010	MON1
5/1/2010 - 5/31/2010	MON1
6/1/2010 – 6/30/2010	MON1
7/1/2010 – 7/31/2010	MON1
8/1/2010 – 8/31/2010	MON1

LEADVILLE CORPORATION	
DISCHARGE MONITORING REPORTING PERIOD	OUTFALL
10/1/2010 – 10/31/2010	MON1
11/1/2010 – 11/30/2010	MON1
12/1/2010 – 12/31/2010	MON1
1/1/2011 – 1/31/2011	MON1
2/1/2011 – 2/28/2011	MON1
5/1/2011 – 5/31/2011	MON1
10/1/2013 – 10/31/2013	MON1

17. Division records establish that Leadville Corporation did not submit documentation demonstrating that the site was inaccessible during the winter months (which are reasonably considered October through May) for the monitoring periods identified above in paragraph 16, as required by the Permit.
18. Leadville Corporation's failure to comply with the monitoring requirements and/or properly establish that the site was not accessible as identified above in paragraphs 15, 16, and 17 constitutes violations of Part I.B.1. of the Permit.

Failure to Properly Notify

19. Pursuant to Part II.A.2. of the Permit, Leadville Corporation is required to notify the Division in writing, of any planned physical alterations or additions to the Facility. Leadville Corporation is required to give advance notice to the Division of any planned changes in the Facility or activity which may result in noncompliance with Permit requirements.
20. Pursuant to Part I.A.1. of the Permit, and as supplemented by the fact sheet to the Permit, mine wastewater treatment at the Facility is achieved via a settling pond which is lined with a brattice cloth. The settling pond is approximately twenty five (25) feet long by twenty (20) feet wide, and two (2) to three (3) feet deep, with an estimated volume of 7,500 to 11,000 gallons. The discharge from the settling pond is measured at Outfall 001 via a v-notch weir.
21. Pursuant to Part I.B.1. of the Permit, Leadville Corporation is required to conduct effluent monitoring at Outfall 001, after the settling pond and prior to entering Iowa Gulch.
22. As noted above in paragraph 6, the settling pond was removed and leveled in 2008. During the inspection on July 24, 2013, the Inspector verified that the settling pond and Outfall 001 no longer exist and therefore, untreated mine water was discharging directly from the Sherman Tunnel adit into Iowa Creek, and Leadville Corporation could not physically monitor a discharge at the discharge point designated in the Permit.
23. Division records establish that Leadville Corporation did not provide prior notification to the Division regarding the physical removal and leveling of the settling pond and Outfall 001 that took place in 2008.

24. Leadville Corporation's failure to provide prior notification to the Division of the physical alterations to the Facility constitutes a violation of Part II.A.2. of the Permit.

Failure to Maintain Records

25. Pursuant to Part I.D.4. of the Permit, Leadville Corporation is required to establish and maintain records for a minimum of three (3) years. The records shall include, but are not limited to: the date, type, exact place, and time of sampling or measurements; the individual(s) who performed the sampling or measurements; the date(s) the analysis was performed; the individual(s) who performed the analysis; the analytical techniques or methods used; the results of such analysis; all monitoring information, including all original strip chart recordings for continuous monitoring instrumentation, all calibration and maintenance records; and copies of all reports required by the Permit.
26. During the July 24, 2013 inspection, the Inspector found that Leadville Corporation did not have any of the records required by the Permit for the monitoring periods between 2010 - 2013.
27. Leadville Corporation's failure to maintain records constitutes a violation of Part I.D.4. of the Permit.

NOTICE OF VIOLATION

28. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that Leadville Corporation has violated the following sections of the Permit:

Part I.B.1. of Permit No. CO-0027014 which states in part: "In order to obtain an indication of the probable compliance or noncompliance with the effluent limitations specified in Part I.A.1., the permittee shall monitor all effluent parameters at the following frequencies....The results of such monitoring shall be reported on the Discharge Monitoring Report form...the permittee may be eligible for winter month monitoring exemptions due to site inaccessibility. The permittee must demonstrate that the site is inaccessible for affected monitoring periods."

Part I.D.1. of Permit No. CO-0027014 which states in part: "Reporting of the data gathered in compliance with Part I.B.1. shall be on a monthly basis... Monitoring results shall be summarized for each calendar month and reported on Division approved discharge monitoring report (DMR) forms (EPA form 3320-1). One form shall be mailed to the Water Quality Control Division...so that the DMR is received no later than the 28th day of the following month."

Part I.D.4. of Permit No. CO-0027014 which states in part: "The permittee shall establish and maintain records. Those records shall include the following..."

Part II.A.2. of Permit No. CO-0027014 which states in part: "The permittee shall notify the Division in writing of any planned physical alterations or additions to the permitted facility. The permittee shall give advance notice to the Division of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements."

REQUIRED CORRECTIVE ACTION

Based upon the foregoing factual and legal determinations and pursuant to §25-8-602 and §25-8-605, C.R.S., Leadville Corporation is hereby ordered to:

29. Cease and desist from all violations of the Colorado Water Quality Control Act, §§25-8-101 through 25-8-803, C.R.S., its implementing regulations promulgated thereto and the Permit.

Furthermore, the Division hereby orders Leadville Corporation to comply with the following specific terms and conditions of this Order:

30. Upon receipt of this Order, and until such a time as a permanent outfall is established, Leadville Corporation shall monitor the mine water discharge twice weekly from the Sherman Tunnel at the portal for the following parameters: As, TR (µg/l); Cd, PD (µg/l); Cr+3, TR (µg/l); Cr+3, PD (µg/l); Cr+5, Tr (µg/l); Cu, PD (µg/l); Fe, Dis (µg/l); Fe, TR (µg/l); Pb, PD (µg/l); Mn, Dis (µg/l); Hg, Tot (µg/l); Mo, Tr (µg/l); Ni, PD (µg/l); Se, PD (µg/l); Ag, PD (µg/l); Zn, PD (µg/l).

All sampling shall be performed in accordance with the methods specified in 40 C.F.R. Part 136. Leadville Corporation shall report the results of the monitoring electronically to the Division by no later than the 15th day of the month following the monitoring period. The data shall be summarized in Excel format and shall be clear and understandable. Laboratory data reports, field measurement reports, and all calibration records shall be submitted as attachments to the data summary.

31. Within thirty (30) calendar day of receipt of this Order, Leadville Corporation shall submit all delinquent DMRs as well as records of its effluent discharge monitoring at the Facility for the period from January 2009 through the date of this Order. The records shall include all laboratory data reports, all field measurement reports, and all calibration and maintenance records, including all other information required to be retained by Part I.D.4. of the Permit.
32. For those monitoring periods listed above in paragraph 16 in which Leadville Corporation seeks an exemption from monitoring requirements due to site inaccessibility during winter months, Leadville Corporation shall provide evidence, such as and/or including: dates that monitoring attempts were made; photographs; field notes; and official weather data from a scientifically recognized organization, such as NOAA (National Oceanic and Atmospheric Administration) or the NWS (National Weather Service) that establish site inaccessibility.
33. Within thirty (30) calendar days of receipt of this Order, Leadville Corporation shall retain the services of a qualified individual or entity specifically experienced in mine-related wastewater treatment to evaluate and recommend Facility improvements and/or mine water management options that must be implemented by Leadville Corporation to ensure compliance with the terms and conditions of the Permit or any subsequently issued permit. This evaluation must consider in detail the volume of mine water discharged each month, pollutant concentrations for all parameters of concern, ambient instream water quality data, and what techniques or technologies may be utilized to produce effluent that is consistently in compliance with the Permit effluent limitations and/or that can support Permit inactivation, if applicable. The evaluation shall include itemized cost estimates associated with each treatment technique, technology, or alternate option identified as a mechanism for mine water discharge management.

34. Within forty five (45) calendar days of receipt of this Order, Leadville Corporation shall provide documentation to the Division that it has retained the services of the qualified individual or entity identified in paragraph 33. This documentation shall include, at a minimum, a copy of the individual or entity's qualifications and a copy of the written contract or agreement for such services, including a copy of the scope of services to be provided.
35. Within ninety (90) calendar days of receipt of this Order, Leadville Corporation shall submit in writing to the Division a final report on the findings of the evaluation identified and outlined in paragraph 33 above. Along with the findings of the evaluation, the report must identify the specific short-term and long-term measures that will be taken by Leadville Corporation in order for the Facility to establish a permanent monitoring location (outfall) and consistently maintain compliance with the Permit or any subsequently issued permit and/or a to support Permit inactivation. For each short-term and long-term measure identified, Leadville Corporation shall also submit a time schedule for completion of each measure. The implementation time schedule submitted must identify completion of all measures by no later than December 31st, 2014. The measures and time schedule submitted shall become a condition of this Order, and Leadville Corporation shall implement the measures and time schedule as submitted unless notified by the Division, in writing, that alternate measures and/or time schedules are appropriate. If the Division imposes alternate measures and/or time schedules, they shall also become a condition of this Order.
36. Beginning in August 2014, and every calendar month thereafter, Leadville Corporation shall submit monthly progress reports to the Division by the end of each calendar month. At a minimum, each report shall outline activities undertaken in the current reporting period and planned activities for the next month to remain in compliance with this Order.
37. If the Leadville Corporation becomes aware of any situation or circumstances that cause the Leadville Corporation to become unable to comply with any condition or time schedules set forth by this Order, the Leadville Corporation shall provide written notice to the Division within five (5) calendar days of the Leadville Corporation becoming aware of such circumstances. The Leadville Corporation's notice shall describe what, if any, impacts will occur on the Leadville Corporation's ability to comply with the Colorado Water Quality Control Act and any impacts on the remaining conditions and/or time schedules specified by this Order, and what steps are being taken to mitigate the impacts.
38. All documents submitted under this Order shall use the same titles as stated in this Order, and shall reference both the number of this Order and the number of the paragraph pursuant to which the document is required. Within thirty (30) calendar days of receiving Division comments on submitted documents, the Leadville Corporation shall revise the submitted document(s) to properly address the Division's comments and resubmit the document(s) for Division review.

NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, the Leadville Corporation shall submit an original and an electronic copy to the Division at the following address:

Colorado Department of Public Health and Environment
Water Quality Control Division / WQCD-CWE-B2
Attention: Christy Pickens
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: (303) 692-3584
Email: christy.pickens@state.co.us

For any person submitting documents, plans, records and reports pursuant to this Notice of Violation / Cease and Desist Order, that person shall make the following certification with each submittal:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

OBLIGATION TO ANSWER AND REQUEST FOR HEARING

Pursuant to §25-8-603, C.R.S. and 5 CCR 1002, §21.11 you are required to submit to the Division an answer affirming or denying each paragraph of the Findings of Fact and responding to the Notice of Violation. The answer shall be filed no later than thirty (30) calendar days after receipt of this action.

Section 25-8-603, C.R.S. and 5 CCR 1002, §21.11 also provide that the recipient of a Notice of Violation may request the Division to conduct a public hearing to determine the validity of the Notice, including the Findings of Fact. Such request shall be filed in writing with the Division and include the information specified in 5 CCR 1002, §21.4(B)(2). Absent a request for hearing, the validity of the factual allegations and the Notice of Violation shall be deemed established in any subsequent Department proceeding. The request for hearing, if any, shall be filed no later than thirty (30) calendar days after issuance of this action. The filing of an answer does not constitute a request for hearing.

FALSIFICATION AND TAMPERING

Be advised, in accord with §25-8-610, C.R.S., that any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Colorado Water Quality Control Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

POTENTIAL CIVIL AND CRIMINAL PENALTIES

You are also advised that any person who violates any provision of the Colorado Water Quality Control Act (the "Act"), §§25-8-101 to 803, C.R.S., or of any permit issued under the Act, or any control regulation promulgated pursuant to the Act, or any final cease and desist order or clean-up order issued by the Division shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs. Further, any person who recklessly, knowingly, intentionally, or with criminal negligence discharges any pollutant into any state waters commits criminal pollution if such discharge is made without a permit, if a permit is required by the Act for such discharge, or if such discharge is made in violation of any permit issued under the Act or in violation of any Cease and Desist Order or Clean-up Order issued by the Division. By virtue of issuing this Notice of Violation / Cease and Desist Order, the State has not waived its right to bring an action for penalties under §§25-8-608 and 609, C.R.S., and may bring such action in the future.

RELEASE OR DISCHARGE NOTIFICATION

Pursuant to §25-8-601, C.R.S., you are further advised that any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of the waters of the state, shall notify the Division of the discharge. If said person fails to so notify, said person is guilty of a misdemeanor, and may be fined or imprisoned or both.

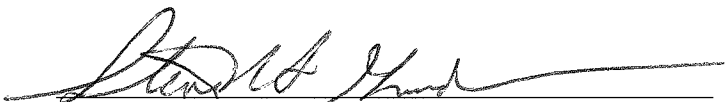
EFFECT OF ORDER

Nothing herein contained, particularly those portions requiring certain acts to be performed within a certain time, shall be construed as a permit or license, either to violate any provisions of the public health laws and regulations promulgated thereunder, or to make any discharge into state waters. Nothing herein contained shall be construed to preclude other individuals, cities, towns, counties, or duly constituted political subdivisions of the state from the exercise of their respective rights to suppress nuisances or to preclude any other lawful actions by such entities or the State.

For further clarification of your rights and obligations under this Notice of Violation / Cease and Desist Order you are advised to consult the Colorado Water Quality Control Act, §§25-8-101 to 803, C.R.S., and regulations promulgated thereunder, 5 CCR 1002.

Issued at Denver, Colorado, this 29th day of May 2014.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



Steven H. Gunderson, Director
WATER QUALITY CONTROL DIVISION